

Rule 15, Ariz. R. Crim. P.

EVIDENCE — DISCOVERY — Court-ordered disclosure Revised 11/2009

Upon a motion by either the defendant or the prosecutor, Rules 15.1(g) and 15.2(g) allow the court to order any person to disclose any additional material or information not covered by Rules 15.1 and 15.2, Ariz. R. Crim. P. The moving party must show that they have a “substantial need” for the requested information and that they are “unable without undue hardship to obtain the substantial equivalent by other means.” Rules 15.1(g), 15.2(g), Ariz. R. Crim. P.; *State v. Fields*, 196 Ariz. 580, 582, 2 P.3d 670, 672 (App. 1999) (denying document production because defendant did not have a “substantial need” for the requested discovery nor would he be unable to obtain the information through other means). Furthermore, if the prosecutor is the moving party, he or she must show that disclosure of the requested information will not violate the defendant’s constitutional rights. Rule 15.2(g), Ariz. R. Crim. P. If the moving party makes these required showings, the court may order the disclosure in its discretion. Rules 15.1(g), 15.2(g), Ariz. R. Crim. P; *see also State v. Connor*, 215 Ariz. 553, 561-562, 161 P.3d 596, 604-605 (App. 2007) (trial court did not abuse its discretion in denying defendant motion to compel the disclosure of victim’s medical records). Upon the request of any person affected by the disclosure order, the court may also vacate or modify it if compliance with it would be unreasonable or oppressive. Rules 15.1(g), 15.2(g), Ariz. R. Crim. P.; *see also, e.g., State v. Tankersley*, 191 Ariz. 359, 367 at ¶ 32, 956 P.2d 486, 494 at ¶ 32 (1998) (*quoting State v. Piper*, 113 Ariz. 390, 392, 555 P.2d 636, 638 (1976)).

Rules 15.1(g) and 15.2(g) cover a broader scope of material and information than is otherwise covered by 15.1 and 15.2. Under 15.1(f) and 15.2(f), the parties' obligations under Rules 15.1 and 15.2 only extend to persons under the parties' direction and control. Rules 15.1(g) and 15.2(g), however, extend to any person, regardless of whether they are under the direction and control of the parties; see *also State v. Kevil*, 111 Ariz. 240, 243, 527 P.2d 285, 288 (1974) (finding that the Arizona Rules of Criminal Procedure allow the court to order the production of documents that are in the possession of a third party who is not under the direction or control of the prosecution).

When the production of material and information not in control of the prosecution might infringe on the victim's constitutional rights or statutory privileges, the defendant must show that his need at least potentially amounts to one of "constitutional dimension" before the court can order production of the documents. *State v. Connor*, 215 Ariz. 553, 561-562, 161 P.3d 596, 604-605 (App. 2007). If the need is of a constitutional dimension, then the court may conduct an *in camera* review to balance the competing rights to the information sought and if disclosure is necessary, circumscribe disclosure consistent with the defendant's right to a fair trial. *Id.*